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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 74-312

DAVID B. SWOAP, as Director etc., et al.,
Petitioners,

vs.

WILLIAM WAITS, et al.,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California

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Comes now petitioner State of California, Department of Benefit Payments, and respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of California entered July 2, 1974.

OPINION BELOW

The judgment and opinion of the Supreme Court of the State of California appears as Appendix A hereto and is reported at 11 Cal. 3d 887, 524 P.2d 117 (1974).

JURISDICTION

The judgment and opinion of the Supreme Court of the State of California was entered on July 2, 1974. Rehearing

was denied August 7, 1974. This petition was filed within ninety days of July 2, 1974. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3). Review is sought of a state court decision which invalidated a state departmental administrative regulation which applied to all AFDC recipient children. As an exercise of the state's law-making power, the regulation in question comes within the meaning of "state statute" as used by Congress in 28 U.S.C. 1257(3) See *Hamilton v. Regents,* 293 U.S. 245, 258 (1934); *Northern Pacific v. Dept. of Public Works,* 268 U.S. 39, 42 (1924).

QUESTION PRESENTED

Congress in enacting the AFDC provisions of the Social Security Act of 1935, as amended, requires that the amount of assistance paid by a state be based on the amount needed in the individual case after other income and resources are considered. 42 U.S.C. 602(a)(7). California promulgated a welfare regulation which counted against the AFDC maximum aid payment the value of housing and utilities received by an AFDC recipient child from a "non-needy" relative with whom the child is living. The question presented is whether the decision of the Supreme Court of the State of California invalidating this regulation brings state law into conflict with federal law.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 42:

> "Section 602(a) A state plan for aid and services to needy families with children must . . . (7) . . . provide that the state agency shall, in determining need, take into consideration any other income and *resources* of any child or relative claiming aid to families with dependent children, ..." (Emphasis added.)

STATEMENT OF THE CASE

Respondent William Waits does not receive welfare aid but receives AFDC assistance on behalf of three AFDC eligible grandchildren and three AFDC eligible great grandchildren. CT 2, 95. Respondent Ida Mae Brown does not receive welfare aid but receives AFDC assistance on behalf of two nieces and one nephew. CT 2, 95. Respondent Ruby Lucey does not receive welfare aid but receives AFDC assistance for her AFDC eligible grandchild. CT 2, 95. Respondent Catherine Jermany is President of the California Welfare Rights Organization, an association composed of AFDC welfare recipients. CT 3, 95. Petitioners are David B. Swoap, Director of Benefit Payments, State of California, and the State of California, Department of Benefit Payments. Respondents filed their class action in the state trial court to have certain AFDC regulations declared invalid. CT 1. The trial court found the regulation invalid and enjoined its enforcement. CT 179. The Supreme Court of the State of California affirmed the trial court's judgment. Appendix A. hereto.

Petitioners in their petition for rehearing to the Supreme Court of the State of California contended that the decision of the Court erroneously brought the state's welfare laws into conflict with federal law. It was argued that 42 U.S.C. 602(a)(7) and 45 C.F.R. 233.20(a)(ii)(a) required them to consider the value of the housing and utilities which are provided by a non-needy relative to AFDC-recipient children in determining the amount of AFDC assistance to be paid. Excerpts from petitioner's brief for rehearing in the state Supreme Court are set forth in Appendix B hereto. Petitioners' petition for rehearing was denied by the Supreme Court of the State of California on August 7, 1974.

In 1971 the California Legislature modified its AFDC program to establish a flat grant system in which the need and grant levels were determined with reference to family size. § 11450; Calif. Stats. 1971, ch. 578; repealed and added by Stats. 1972, ch. 1406; amended by Stats. 1973, ch. 75.[1] The amount of assistance payable was calculated as follows: Maximum aid less nonexempt income equals cash grant. In order to meet the requirements of federal law, California adopted administrative regulations which placed a value upon the housing and utility needs of different sized AFDC families. Regulation PSS 44-115.9; CT 90; Appendix C. The regulation here in question, PSS 44-115.611, provided for a reduction of the AFDC grant paid on behalf of recipient children where the housing and utility needs of the children were met in whole or in part by a "non-needy" relative[2] with whom they were living. The

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1. Unless otherwise indicated, all section references are to the California Welfare and Institutions Code.

The current section 11450 schedule of benefits, adjusted for cost of living are:

Size of FBU	Maximum Aid
1	$129
2	212
3	262
4	311
5	355
6	400
7	438
8	477
9	516
10 or more	554

Regulation 44-315.41, Appendix D hereto

2. Natural parents, adoptive parents and stepfathers were excluded from the definition of "relative" by regulation PSS 44-115.6. "Non-needy" means not receiving welfare aid. PSS 44-115.6, Appendix C hereto.

amount of this reduction was determined by subtracting any increased housing and utility costs of the non-needy relative from the value of the children's housing and utility needs. § 11450; Regulation PSS 44-115.611. For example the respondent Waits at the time of the litigation below was entitled to receive a maximum aid payment of $360.00 per month less nonexempt income on behalf of the six children. CT 15. From the $360.00 there was subtracted "in-kind income" of $86.00 per month for housing and $15.00 for utilities which were furnished without additional cost to the six AFDC-recipient children in respondent's care. Appendix A, p. 3; CT 90.[3] Regulation PSS 44-115.611; CT 89; Appendix C hereto. The assistance paid for support of the children was therefore reduced to $259.00, Appendix A, p. 3.

The Supreme Court of the State of California found the regulation to be inconsistent with the "flat grant" system since the reduced needs of housing and utilities were already taken into account by the California Legislature in computing the need levels fixed in section 11450 (Appendix E). Appendix A, p. 7. The State Supreme Court held, as an additional ground of decision, that the regulation was invalid as conclusively presuming that non-needy relatives intend to make a gift of the value of the housing and utilities to the AFDC children when the children are taken into the relative's home. Appendix A, pp. 10-11. The state court also found the regulation invalid as assigning a fictional value to the housing and utilities so furnished, if it is assumed that such action produced cognizable income. Appendix A, pp. 11-13. Lastly, the regulation was struck down as

3. Waits would be entitled to a credit for any additional expenses caused by addition of the six children to his household. Appendix A, p. 3, fn. 1; Regulation PSS 44-115.611, Appendix C hereto.

being inconsistent with the congressional objectives of encouraging the care of dependent children in the homes of relatives under 42 U.S.C. 601. Appendix A, p. 3.

REASONS FOR GRANTING THE WRIT

The Decision Below Erroneously Brings California Welfare Law Into Conflict With the Objectives of Congress

The AFDC program is based on a scheme of cooperative federalism. *King v. Smith,* 392 U.S. 309, 316 (1968). State participation in the program is not required at the cost of losing federal funds. As long as a state is receiving federal funds, however, it is under a legal requirement to comply with the federal conditions placed on the receipt of those funds. *Rosado v. Wyman,* 397 U.S. 397, 408 (1970); *Townsend v. Swank,* 404 U.S. 282, 286 (1971).

In administering AFDC programs, state agencies are required, in determining need, to ". . . take into consideration any other income and resources of any child . . . claiming aid to families with dependent children, ..." 42 U.S.C. 602(a)(7).[4] Under HEW regulations, all AFDC plans must specify a statewide standard of need. Both eligibility for AFDC, and the amount of the grant to be paid, are based on a comparison of the "standard of need" with the income and resources available to the applicant or recipient. 45 C.F.R. 233.20(a)(3)(ii)(a).[5] This Court, after

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4. A state AFDC plan must "provide that the state agency shall, in determining need, take into consideration any other income and resources of any child . . . claiming aid to families with dependent children, ..." 42 U.S.C. 602(a)(7). (Emphasis added.)

5. "A state plan for . . . AFDC . . . must . . . [p]rovide that, in establishing financial eligibility and the amount of assistance payment . . . [a]ll income and *resources* . . . will be considered in relation to the state's standard of assistance. . . ." 45 C.F.R. 233.20(a)(3)(ii)(a). (Emphasis added.) Appendix F hereto.

noting the language of 42 U.S.C. 602(a)(7) and of the applicable federal regulation, stated:

> "From the inception of the Act, Congress has sought to ensure that AFDC assistance is provided only to needy families, and that the amount of assistance actually paid is based on the amount needed in the *individual* case after other income and resources are considered. (Emphasis in original text; footnote omitted.) Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account, and this individualized approach has been reflected in the implementing regulations." *Shea v. Vialpando,* ..... U.S. ....., ... (1974).

Neither the federal statute nor regulations define "resources" as used in 42 U.S.C. 602(a)(7). Yet in the related Supplemental Security Income (SSI) program, Congress recognized that the provision of housing, support, and maintenance by a non-aid recipient to an SSI recipient constitutes a resource having value which acts to reduce the SSI aid otherwise payable. Thus 42 U.S.C. 1382(a)(2)(A) provides:

> ". . . that in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in-kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) . . . shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph; . . . ."

It is petitioners' position that the value of "support and maintenance" recognized as unearned income by Congress in 42 U.S.C. 1382 (a)(2)(A) is the same as the value of "housing and utilities" which the state regulation sought

to recognize. If this analogy is proper, then the state is required by 42 U.S.C. 602(a)(7) to recognize as non-exempt income the value of the "housing and utilities" provided by a non-needy relative to the AFDC recipient child.

The objectives of the regulation were twofold. First, the regulation sought to equalize welfare benefits between AFDC recipient children. Using the six children in the care of respondent Waits as an example, it is obvious that these children receive an extra cash benefit each month because their housing and utilities are provided free to them, as compared to an identical six children AFDC budget unit who have to pay out utilities and housing out of their AFDC grant. This invidious discrimination would be measured by the difference between the zero cost for utilities and housing to the Waits AFDC budget unit, and the cost of utilities and housing actually paid out of the grant of the second budget unit. Secondly, the regulation protects the public purse. In the Courts below, the evidence showed that the invalidation of the regulation in question would cause the government to incur the following program costs for the 1972-73 fiscal year:

United States:	$2,283,700.00
State of California:	$1,579,400.00
California Counties:	$ 760,500.00
Total	$4,623,600.00

CT 168-169; Appendix G hereto.

It follows that the decision below erroneously construed state welfare law so as to cause it to come into conflict with the paramount federal requirements that, in determining the needs of an AFDC child, a state shall take into consideration the child's income and resources.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of California in this cause.

Respectfully submitted,

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Appendix A

In the Supreme Court of the State of California

In Bank

S.F. 23012 S.F. 23013
Super. Ct. No. 418746

Supreme Court Filed Jul 2 - 1974 G. E. Bishel, Clerk

William Waits et al.,
Plaintiffs and Respondents,

vs.

David B. Swoap, as Director, etc., et al.,
Defendants and Appellants.

This is a companion case to *Cooper v. Swoap,* decided this day, *ante,* p. ■, and presents analogous questions as to the validity of an administrative welfare regulation promulgated subsequent to the Welfare Reform Act of 1971. In *Cooper* we have held that Regulation 44-115.8, authorizing designated deductions from grants of recipients of aid to families with dependent children (AFDC) who share housing with recipients of "adult aid" benefits, is incompatible with the governing legislative provisions and therefore invalid. In this case we address a comparable regulation, Regulation 44-115.611, which authorizes similar deductions from welfare grants of AFDC recipients who share housing with "nonneedy" relatives.

As discussed below, we have concluded that, as in *Cooper,* the instant regulation conflicts with the controlling statutes and cannot stand. Initially, we point out that just as in *Cooper* the regulation at issue emanates from an adminis-

SEE DISSENTING OPINIONS

trative conception of "noncash economic benefits" which is incompatible with the "flat grant" system of welfare pay-

ments established by the 1971 welfare reform legislation. Second, we explain that the benefits at issue cannot properly be characterized as "income" which may be deducted from a recipient's grant. Finally, we demonstrate that even if such benefits could properly be considered "income," the present regulation would still be invalid since it does not measure the actual value of the benefits received by a recipient but instead assigns a fictional value to such benefits. Accordingly, we affirm the trial court's decision invalidating the regulation at issue.

1. *The facts of the instant case.*

Plaintiffs Mr. and Mrs. Waits receive AFDC benefits on behalf of the six needy children (three grandchildren and three great-grandchildren) whom they have voluntarily taken into their home. Under Welfare and Institutions Code section 11450 the six children were entitled at the time this action was commenced to a basic grant of $360 per month; as a result of the promulgation of Regulation 44-115.611, however, the grant was reduced to $259 per month (a $101 deduction). Regulation 44-115.611 had an equally significant effect on the grants received by the families of the two other individual plaintiffs in this case. The grant to the three needy children (two nieces and one nephew) in the care of the Browns was reduced from $235 per month to $140 per month (a $95 deduction); the grant to the needy grandchild in the care of the Luceys was reduced from $115 per month to $48 per month (a $67 deduction).[1]

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1. As in *Cooper*, all the figures utilized in this opinion refer to the figures in force at the time this action was initiated. Although the amounts have been subsequently altered in minor respects in response to changes in the cost of living, such changes have no bearing on the validity of the regulation in question.

The reductions cited in the text reflect the fact that at the time this suit was commenced the Alameda County Welfare Department had interpreted the challenged regulation as requiring that grants to children living with nonneedy relatives be reduced by the *full* amount of the state's housing and utility "allowance"; the county

Seeking to avoid the harsh effects of these reductions, the three families instituted the instant class action, attacking Regulation 44-115.611 as incompatible with the controlling state and federal statutes, and seeking injunctive and declaratory relief. The trial court granted plaintiffs' request for a preliminary injunction and subsequently entered an order declaring the contested regulation invalid and prohibiting its future enforcement. Defendant state and county welfare authorities appeal from the judgment.

In *Cooper v. Swoap, ante,* pp. .....,* we have reviewed at some length the historical background of the Welfare Reform Act of 1971, and the principal innovations introduced by that legislation. Regulation 44-115.611, the regulation at issue here, was one of a series of regulations which the State Department of Social Welfare (department) promulgated as an ostensible implementation of the 1971 act. In substance, the challenged regulation provides that whenever an AFDC recipient has voluntarily been given a home by a "nonneedy" relative,[2] the department

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gave no credit for additional out-of-pocket expenses incurred by the nonneedy relative. Although the state director has since ordered the county to afford such a credit, as we explain *infra,* this credit in no way cures the significant defects of the challenged regulation.

*Multilith opinion, pp. 6-11.

2. Under the department's regulation, a relative is considered "nonneedy" so long as he is not personally receiving benefits from any categorical aid program; the regulation also excludes natural or adoptive parents and stepfathers from the "nonneedy relative" classification. (Reg. 44-115.6.) As the financial circumstances of the present "nonneedy" plaintiffs demonstrate, however, the regulation applies to many who are certainly poor by any standard other than welfare eligibility. For example, Mr. and Mrs. Waits possess as their sole source of income social security payments and a pension to Mr. Waits, the combined total of which amounts to less than $5,000 annually; Mr. Lucey is presently receiving unemployment benefits. All the families have stated by affidavit that under the grant reduction, neither the couples themselves nor the children in their care were getting enough to eat and that the families could no longer afford to clothe the children properly.

will hold that such child has received a designated "income" in the form of housing and utility benefits, which "income" is to be deducted from the child's welfare grant.[3] Although the rationale of the regulation is not explicitly articulated, the regulation appears to rest upon the assumption that a nonneedy relative who agrees to take an AFDC child into his home is necessarily both willing and able to make a gift of housing and utilities to that child; moreover, the regulation further asserts that such housing and utility benefits are "income" to the AFDC recipient which may be deducted from his basic flat grant.

The question presented is whether this regulation is consistent with the prevailing legislative scheme. For the reasons reviewed below, we conclude that the regulation is incompatible with the governing statutes and is therefore invalid.

2. *Regulation 44-115.611, resting as it does on the department's "noncash economic benefit" concept, is completely at odds with the flat grant system of AFDC benefits established by the 1971 legislation.*

Although, unlike the regulation at issue in *Cooper*, the instant regulation was not specifically rejected by the Legislature,[4] Regulation 44-115.611 shares all of the other fatal defects exhibited by the regulation invalidated in *Cooper*. The similarities between the two regulations stem from the

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3. Regulation 44-115.611 provides: "The excess of the in-kind income value [i.e., allowance] for housing and utilities [set forth in Regulation 44-115.9] . . . for the appropriate size Family Budget Unit over the increased cost of living and utilities to the nonneedy relative caused by the presence of the AFDC child(ren) in his household shall be considered a contribution in kind to the Family Budget Unit."

4. To our knowledge, neither the Burgener Bill (Sen. Bill No. 545 (1971 Reg. Sess.)), nor any other welfare reform proposal considered in 1971, contained a provision analogous to the instant regulation; the Legislature's "non-rejection" of the matter thus simply reflects the fact that the issue was never presented to it.

fact that the instant regulation is simply another variation on the department's "noncash economic benefit" theme, a theme which, as explained in *Cooper,* is fundamentally incompatible with the "flat grant" system of welfare benefits adopted by the Legislature in 1971. Thus, although the instant regulation seeks to reduce welfare payments on the basis of reduced housing and utility needs of recipients living with nonneedy relatives, such reduced needs, if they in fact exist, have already been taken into account by the Legislature in computing the flat grant figures of section 11450.[5] Consequently, if approved, the challenged regulation would in reality effect an improper "double deduction" of welfare benefits for those recipients who happen to live with nonneedy relatives.

In singling out children living with nonneedy relatives for disparate treatment, the instant regulation directly conflicts with the legislative mandate that a recipient's reduced need does not provide a basis for reducing the basic amount of the legislatively determined flat grant. As with the regulation at issue in *Cooper,* the legislative subcommittee reviewing the implementation of the 1971 welfare legislation has condemned the present regulation as contrary to the statutory scheme. (Senate-Assembly Subcommittee on Implementation of Welfare Reform, Report to the Legislature (March 17, 1972) p. 21.) We agree with the subcommittee's conclusion that "[t]here is no legal basis in the Welfare Reform Act for [the regulation's] reduction." (*Id.*)

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5. Prior to 1971, AFDC recipients living with "nonneedy" relatives received the same treatment as all other recipients. Their housing costs were paid in the amount of their pro rata share of their living arrangement without regard to the persons with whom they lived; there was no assumption that they received free housing and utilities simply because their relatives had agreed to take them into their homes. As we explained in *Cooper,* in setting the flat grant figure of section 11450 the Legislature averaged the needs of all recipients under the past practice, and consequently such figures took account of any savings enjoyed by recipients living with nonneedy relatives.

3. *The housing and utility benefits at issue do not constitute "income" within the meaning of Welfare and Institutions Code section 11450.*

The department again contends, of course, that the regulation is not contrary to the legislative scheme because it represents a reasonable measure of a recipient's "in-kind" income, which under section 11450, must be deducted from the fixed grant figure. The department's characterization of such benefits as "income," however, is no more persuasive in this context than in *Cooper.*

As we explained in *Cooper,* "noncash economic benefits" in general, and "shared housing" in particular, have never been considered deductible "income" throughout the entire history of California welfare programs, and nothing in the 1971 welfare legislation indicates that the Legislature intended to change that approach. Further, the report of the Legislative Analyst, predicting that the 1971 act would effect no saving in substantive grant payments, confirms the conclusion that the Legislature did not intend to transform these benefits into deductible income. (See *Cooper v. Swoap, ante,* p. ....., fn. 5.)*

Moreover, insofar as the department's characterization of such benefits as "income" rests upon an assumption that nonneedy relatives have made a "gift" of housing and utility resources, the department's position suffers from an even more fundamental defect. The "nonneedy" relatives covered by the present regulation are under no legal duty to support the children whom they have voluntarily taken into their homes. The regulation at issue, however, totally ignores this important fact, and *conclusively presumes* that such relatives, by agreeing to take such children into their homes, are both willing and able to provide the children with free housing and utilities; thus, even if a relative disclaims any

*Multilith opinion, p. 8, fn. 5.

donative intent, the regulation treats the housing and utilities as having been given, free of charge, to the AFDC recipients.[6]

In assigning "income" to an AFDC recipient even though the nonneedy relative with whom he lives may be neither able nor willing to donate such "income," the present regulation conflicts directly with the teaching of the recent United States Supreme Court decisions of King v. Smith (1968) 392 U.S. 309 and Lewis v. Martin (1970) 397 U.S. 552. In both *King* and *Lewis* the court struck down provisions which, like the instant regulation, *assumed* that income or resources of an individual not legally obligated to support the AFDC recipient were available for the recipient's support. Indeed, more recently, several federal district courts have applied *King* and *Lewis* to invalidate administrative practices quite similar to the regulation at issue here. (Jenkins v. George (W.D.Pa. 1969) 312 F.Supp. 289; Marotti v. White (D.Conn. 1972) 342 F.Supp. 823; Boucher v. Minter (D.Mass. 1972) 349 F.Supp. 1240; cf. Hurley v. Van Lare (S.D.N.Y. 1973) 365 F.Supp. 186.) As the three-judge court in *Jenkins* declared: "[W]hether the relationship is one of stepfather, relative or total stranger,

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6. The dissenting opinions share the regulation's defect in this regard, asserting throughout that the challenged regulation only takes into account "free" housing and utilities afforded AFDC recipients by nonneedy relatives. The dissent never comes to grips with the fact that the regulation conclusively presumes such housing and utilities to have been given free of charge, even if the nonneedy relative explicitly disclaims any donative intent or is financially unable to make such a gift.

Of course, if a nonneedy relative does wish to provide a recipient with free housing and utilities, the department can consider such donation as "in kind" income and can deduct an amount, equal to the *actual* value of the housing and utilities provided, from the recipient's welfare grant. (See former Reg. 44-115.62.) Without an explicit indication of donative intent, however, "[t]he [state welfare department] may not assume that a recipient's relatives, not legally liable for his support, will charge less than other persons providing room and board to welfare recipients." (Marotti v. White (D. Conn. 1972) 342 F.Supp. 823, 826.)

the test is simply whether the substitute parent is *required by law* to furnish the support; if he is not, then the state may not, solely by the substitute parent relationship, *assume* a contribution to the child's support by some presumption of availability of income." (Emphasis added.) (312 F.Supp. at p. 292.)

4. *In any event, the regulation is invalid because it does not measure the actual value of the benefits received by a recipient.*

Finally, even if it were permissible to treat the housing and utility resources at issue here as "income" to a recipient, the present regulation would be invalid because it fails to measure the *actual* value of the benefits received by a recipient, but instead assigns a fictional value to such benefits. As in *Cooper,* the instant regulation determines a recipient's income primarily on the basis of the department's own "allowance" figures; under the present regulation "income" is defined as the difference between the appropriate "allowance" figure and the actual additional out-of-pocket expenses incurred by the nonneedy relatives as a result of the child's presence in the home. Thus, if the nonneedy relatives incur no *additional* out-of-pocket expenses, the recipient's income is automatically and conclusively set at the department's allowance figure, *regardless of the actual value of the housing and utility benefits which a recipient in fact receives.*[7]

7. While the "credit" given for actual out-of-pocket expenses would in some cases ameliorate the harshness of the regulation's effect, such credit would in no way cure the regulation's fundamental defects. Under the regulation's terms, the state's housing and utility allowance, rather than the actual value of the benefits received by a recipient, constitutes the basic "income" figure; although the recipient can reduce the size of his purported "income," and the consequent reduction in his grant, if his nonneedy relative incurs additional out-of-pocket expenses, the department never considers the actual value of housing and utility benefits as distinct from out-of-pocket expenses.

As we stated in *Cooper:* "No matter how accurately an allowance figure may reflect the *average* cost of housing and utilities for welfare recipients throughout the state, it is still an impermissible presumption as to the value of these items received by any one recipient. Only the *actual value* of housing and utilities could possibly constitute income to the recipient, and this the regulation does not measure." (Original emphasis; footnote omitted.) (Cooper v. Swoap, *ante,* at p. .....)*

5. *Conclusion.*

As discussed above, we have concluded that the challenged regulation is incompatible with the provisions of the Welfare Reform Act of 1971 and is consequently invalid. Indeed, the regulation at issue in the instant case is particularly invidious, for it not only contravenes the "flat grant" approach mandated by the 1971 legislation, but, in singling out AFDC children living with "nonneedy relatives" for reduced grants, it undermines one of the central objectives of the entire AFDC program, *"the purpose of encouraging the care of dependent children* in their homes or *in the homes of relatives."* (Emphasis added.) (42 U.S.C. § 601; see Welf. & Inst. Code, § 11205.)

The objective of the challenged regulation is apparently to reduce state expenditures for AFDC children at the expense of relatives who willingly take such children into their homes. In promulgating this unauthorized measure, the department is in reality gambling that close relatives acting as caretakers will feel a moral obligation to keep an AFDC child even though the child can no longer contribute the AFDC grant which the Legislature guaranteed. If the department "wins" its gamble, the state will save money but only at the expense of depriving children of essential need items and subjecting their generous relatives

*Multilith opinion, p. 27.

to unwarranted hardships. If the department loses its gamble, as is all too possible,[8] the children will lose the close family environment sought to be achieved by the act and the state will have to pay the higher cost of foster care.

In essence, the department has so enmeshed itself in fictitious and misleading labels for the sake of reducing welfare costs that it has obfuscated the purpose of the underlying statute: the preservation, so far as possible, of the family unit, and the more fundamental purpose of the preservation of the health of the state's children, the potential leaders of tomorrow.

The judgment of the superior court, declaring Regulation 44-115.611 invalid and enjoining its enforcement, is affirmed.

TOBRINER, J.

WE CONCUR:
WRIGHT, C. J.
MOSK, J.
SULLIVAN, J.

WAITS v. SWOAP
S.F. 23012
S.F. 23013

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8. In testimony at an Assembly Welfare Committee hearing on foster care, September 7, 1972, Mrs. Mary Charles of the Santa Clara County Department of Social Services categorized economic distress as a major contributory factor to family breakdown. She focussed on children living with nonneedy relatives as a "high-risk population group newly created by the State Department of Social Welfare." Mrs. Charles testified that her office labeled this group "high-risk" because "heretofore the homes of relatives had been looked upon as alternatives for foster homes or institutional care for both social and financial reasons. We are already losing some of these relatives as child-caring people; we have been unable to recruit some others who might have been available had their costs of caring for the children been covered. [¶] The reduced payment, $48 per month . . . provides hardly enough money to feed a teenager. It is a tremendous hardship [on these relatives]. . . . The State Department of Social Welfare's Regulation 44-115.611 provid[ing] that the child care of housing and utilities are 'income in kind' contributed by the relatives is simply not realistic." (Pp. 46-47.)

DISSENTING OPINION BY BURKE, J.

It may come as a surprise to the Legislature, and to the taxpayers of this state, that by reason of the majority's holding herein, a *full* welfare grant must be paid to relatives caring for a dependent child, despite the fact that these persons do not themselves qualify for aid (and, indeed, may be wealthy) and despite the fact that they may incur no increased costs whatever in boarding the child. In my view such a result is wholly irrational: Welfare is payable to persons "in need thereof" (Welf. & Inst. Code, § 10000), and a child who is cared for by nonneedy relatives is not an apt recipient of public funds.

As I explained in my dissent in *Cooper v. Swoap, ante,* page ■, the department quite properly has enacted regulations taking into consideration the fact that certain welfare recipients may have regular economic advantages not available to other recipients, advantages which must be evaluated and considered in calculating the size of the welfare grant. The instant regulation (44-115.611) assigns to a child an amount of "in-kind income" to reflect the fact that, unlike other AFDC recipients, he receives free housing and utilities. Under the majority's analysis, such a child must be paid the *full* AFDC grant specified by statute for dependent children. The department's regulation, however, recognizes the impropriety of paying public funds to nonneedy persons and limits the amount of the grant to such persons.

The regulation is based upon the premise that such children commonly reside in a spare, unused room in the home or do not otherwise significantly increase the housing and utilities cost to the relative. The regulations assign a specified value (in dollars per month) to the resources of housing and utilities available to each child living with nonneedy relatives. For example, the combined value of

both items to one child is $67 per month, to two children $87 per month, and to three children $95 per month. (Regs. 44-115.91, 44-115.92.) Regulation 44-115.611 does, however, acknowledge that in some cases the child's presence in the home of nonneedy relatives may actually increase their housing and utilities cost and, accordingly, provision is made for reducing the specified "in-kind income" values to that extent. The excess, if any, of the in-kind income value over the increased cost to the nonneedy relative is considered in-kind income, to be deducted from the AFDC grant specified in section 11450 of the Welfare and Institutions Code.

For example, the grant specified for a family having no outside income and consisting of three needy, eligible persons would be $237 per month. This figure includes, of course, an allowance for housing and utilities. (See Welf. & Inst. Code, § 11452, subds. (1) and (4).) But if these three persons consisted of dependent children living with nonneedy relatives, the regulations would assign an in-kind income to them of $95 per month, on the basis that they are receiving free housing and utilities unavailable to an ordinary needy AFDC family. If, however, the nonneedy relatives had to move to larger quarters to accommodate the children in their care, with a resultant additional housing and utilities expense of $80 per month, only $15 would be deducted from the AFDC grant.

The majority assert that the housing and utilities voluntarily furnished by nonneedy relatives to the dependent children in their care should not, under federal or state law, be considered to be a "resource" or "income" of the child for purposes of reducing the size of the AFDC grant. Yet the cases indicate the contrary rule. First of all, the United States Supreme Court has held that HEW regula-

tions which permit the states to consider currently available "income" or "resources" of a child in determining eligibility and amount of aid "clearly comport" with the federal act. (Lewis v. Martin, 397 U.S. 552, 555; King v. Smith, 392 U.S. 309, 319, fn. 16.)

Lewis held that the states may not *conclusively* presume that a dependent child's needs are reduced by the amount of income available from a "man in the house," (such as a stepfather or other adult male assuming the role of spouse to the mother), whether or not such income is in fact available or actually used to support the child. (397 U.S. at pp. 554-560; see also Jenkins v. Georges, 312 F.Supp. 289; Marotti v. White, 342 F.Supp. 823.) As stated in *Lewis* (pp. 559-560), *"In the absence of proof of actual contribution,* California may not consider the child's 'resources' to include either the income of a nonadopting stepfather who is not legally obligated to support the child as is a natural parent, or the income of a MARS [man assuming role of spouse]—whatever the nature of his obligation to support." (Italics added.) By clear implication, if a child actually receives income or other resources from a relative or friend, regardless of preexisting support duty, the amount or value thereof may be taken into account in determining aid payments. (See People v. Lockett, 25 Cal.App.3d 433; County of San Diego v. Montgomery, 23 Cal.App.3d 174.)[1]

Certainly, if a dependent child received an outright gift of $50 each month from nonneedy relatives for housing and utilities, that amount could be deducted from the grant

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1. The department has submitted to this court a copy of a letter from Phillip J. Rutledge, Acting Administrator of HEW, dated March 27, 1973, stating that the regulations at issue have been reviewed by HEW and are in conformity with federal law and regulations. We have, in past cases, noted that "HEW's views are, of course, subject to considerable deference by this court." (County of Alameda v. Carleson, 5 Cal.3d 730, 742, fn. 13.)

the child would otherwise receive. No cogent reason appears why a noncash economic benefit (such as free housing and utilities) should not be similarly treated by assigning a cash value thereto and deducting that value from the grant. The term "resources" in the state and federal statutes is broad enough to include such noncash economic benefits, and nothing in state or federal law prevents the department from making a reasonable estimate of the value of those benefits for purposes of adjusting the size of the AFDC grant.

Significantly, plaintiffs have not asserted that the department's "in-kind income" values are unreasonably large. Undoubtedly plaintiffs could have alleged and attempted to prove at trial that the department's estimates of in-kind income (e.g., $67 per month for one child for housing and utilities) are unrealistic or unreasonably large, resulting in an excessive deduction from the AFDC grant. On the present record, however, and in the absence of such a showing, we must assume that the department properly discharged its statutory responsibilities to implement, interpret and make specific the law it enforces (Welf. & Inst. Code, § 10554) and to establish rules and regulations fixing uniform statewide standards for the administration of aid programs (*id.*, §§ 10604, 11452).

Further, as explained above, the department has taken into account the possibility that the presence of a child in the home of a nonneedy relative may increase the housing and utilities expense to the relative, and has provided for an appropriate credit. This aspect of the regulation also appears to comport with federal law, which contemplates that aid payments are to be made not only on behalf of the dependent child, but also "to meet the needs of the relative with whom the dependent child is living." (42

U.S.C § 606, subd. (b).) An actual increase in costs to the relative justifies a corresponding credit to the value of the resources furnished by them. Once again, plaintiffs have not attempted to show that the department has improperly limited the kinds of increased costs which will give rise to a credit against the grant reduction.

Plaintiffs contend that the department has improperly created a rebuttable presumption that the child's presence does not increase the cost of housing and utilities to nonneedy relatives. Plaintiffs suggest that in the ordinary case such costs do exist. Even if we assume, however, that the department's presumption may be unrealistic in some cases, nevertheless it seems reasonable to impose upon plaintiffs the burden of establishing their increased costs for such information is obviously more readily available to them than to the department. (See People v. Gilbert, 1 Cal.3d 475, 484, and fn. 14; Morris v. Williams, 67 Cal.2d 733, 760.) As we noted in *Gilbert,* a case involving similar issues, although conclusive presumptions face frequent constitutional attack (see, e.g., Lewis v. Martin, *supra,* 397 U.S. 552, 554-560), rebuttable presumptions are often sustained on the basis that their effect is not conclusive. We further pointed out in *Gilbert* that "Unquestionably, the man [assuming a role as spouse] and the AFDC family have far better information than is available to the Department of Social Welfare as to how the man actually spends his money. In order to overcome the attendant difficulties in calculating the man's contributions [to the AFDC family], the department could reasonably establish a rebuttable presumption that all the man's income after certain deductions had been given to the AFDC family." By a parity of reasoning, the department should be permitted to establish a rebuttable presumption that the child's presence in the home of nonneedy relatives has not significantly increased their housing and utilities costs.

The majority suggest that the "in-kind income" approach of the department's regulations, being in essence an attempt to adjust aid payments in recognition of the differing needs of various classes of AFDC recipients, improperly alters or amends the fixed statutory schedule of minimum needs set forth in section 11452 of the Welfare and Institutions Code. Yet the schedule of minimum needs in section 11452 is used only for purposes of determining the *eligibility* for aid of a family with dependent children. Regulation 44-115.611 does not purport to affect or alter the statutory standards for eligibility; that regulation only comes into play to measure the amount of aid to be paid to an otherwise eligible recipient or family. And although the regulation does indeed reduce the statutory maximum grant specified in section 11450, such reduction is authorized by the requirement of that section that the recipient's outside "income" (which includes currently used "resources" under § 11008 be deducted from the maximum grant. In other words, by reason of the requirement in state and federal law that an aid recipient's outside income and resources are to be taken into account in determining the size of the grant, the department *is* authorized to consider the "needs" of the recipient, to the extent those needs are reduced by virtue of such income or resources.

The majority assert that the department's regulations conflict with the general policy underlying the federal act to encourage the care of dependent children. The preamble section to the federal act's provisions regarding the AFDC program states that the program was initiated "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services, *as far as practicable under the condi-*

tions in each state, to *needy* dependent children and the parents or relatives with whom they are living . . . ." (Italics added; 42 U.S.C. § 601.) However, contrary to the majority's suggestion, it is not wholly clear that the in-kind income regulations at issue actually discourage nonneedy relatives from caring for dependent children, for such relatives, regardless of their need, do receive an AFDC grant to assist them in such care, a grant which is reduced only to the extent that the specified in-kind values for housing and utilities exceed the additional expenses incurred for those items by reason of the child's presence in their home.

Moreover, as indicated by the italicized language of the federal provision quoted above, it is recognized that practical considerations may justify reasonable limitations upon the amount of aid available to various classes of AFDC recipients. As explained in a recent decision of the United States Supreme Court, the states have considerable latitude in allocating AFDC resources and may establish their own standards of eligibility and level of aid payments so long as no violation of specific provisions of the federal act occurs; there is no requirement in the act that the states must maximize individual eligibility for benefits. (Jefferson v. Hackney, 406 U.S. 535, 541-543.) I find no provision of state or federal law which requires equal treatment of children living, respectively, with needy and nonneedy relatives.

Plaintiffs contend that the department's regulations violate constitutional equal protection principles by providing for a reduced grant to children who live with nonneedy relatives. Plaintiffs evidently complain that the regulations do not take into account the possibility that some children living with needy relatives may have less need for assistance but nevertheless receive a larger aid payment. But as

Jefferson v. Hackney, *supra,* 406 U.S. 535, points out, equal protection principles are not violated merely because a particular classification may be imperfect in some of its applications; so long as the classification has a rational basis and does not result in an invidious discrimination, a state's efforts in allocating assistance benefits are not subject to a "constitutional straight jacket." (*Id.,* at pp. 546-547.) Since budgetary constraints do not allow the payment of the full standard of need for all AFDC recipients, the department properly may conclude that *generally* children living with nonneedy relatives are more able to bear the hardship of a reduced grant than children living with needy relatives. (*Id.,* at p. 549.)

I would hold that the department's Regulation 44-115.611 is not invalid under federal or state law, and that accordingly the trial court erred in prohibiting further enforcement of that regulation.

BURKE, J.

I CONCUR:

McCOMB, J.

COPY

WAITS v. SWOAP

S.F. 23012
S.F. 23013

DISSENTING OPINION BY CLARK, J.

In addition to incorporating by reference the discussion of in-kind income contained in my dissent in *Cooper,* I offer corrections to misstatements in the majority opinion in this case.

The majority states (*ante,* p. ...., fn. 5)* that prior to 1971, AFDC recipients living with nonneedy relatives received the same treatment as all other recipients. This is incorrect. See, for example, Regulation 44-115.162 of 1 July 1967, which specifies: "When a child lives with a nonneedy relative, the amount by which the relative is able and willing to meet the child's total need is net income." This statement was repeated in department regulations issued on 1 December 1967 (44-115.62) and on 1 June 1969 (44-115.72). On 1 July 1970 this language was amended by Regulation 44-115.7 entitled "Contribution by a nonneedy relative. When the contribution made in-kind by a nonneedy relative is expressed in terms of an amount to be applied against total rather than specified items of need in the assistance standard, such amount is net income to the AFDC children. For example, a nonneedy relative specified that the contribution will be equal to all but $50.00 of the child's need. The difference between the child's allowable need and $50.00 is net income to the child." This regulation, renumbered as 44-115.6 on 1 December 1970, was in effect at the time the Welfare Reform Act was adopted. It allowed the nonneedy relative the option of estimating the value of the total support provided to the child, and such value was considered net income to the child. In fact, the 44-115.612 regulation at issue repeats the substance of the regulations of 1 December and 1 July 1970. Thus, the department, in adopting the regulation in issue, was merely continuing the existing state policy of taking into consideration as income the in-kind value of support and maintenance furnished by nonneedy relatives.

The majority intimates (*ante,* p. ....)* that the regulation

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*Majority opinion, page 7, footnote 5.

*Majority opinion, page 12.

at issue is in some way defective in that it reimburses the nonneedy relative only for out-of-pocket expenses. The majority states (*ante,* p. ....)*: "Thus, if the nonneedy relative incurs no *additional* out of pocket expenses, the recipient's income is automatically and conclusively set at the department's allowance figure, *regardless* of the actual value of the housing and utility benefits which a recipient in fact receives." (Fn. omitted.)

The majority's implication is that nonneedy relatives ought to be reimbursed beyond the costs of supporting the recipient. Whether or not providing such a windfall to nonneedy relatives is wise social policy, as the majority evidently believes, it is not the law. Welfare and Institutions Code section 11006 provides: "All money paid to a recipient or recipient group as aid is intended to help the recipient meet his individual needs or, in the case of a recipient group, the needs of the recipient group, and is not for the benefit of any other person."

Unlike the situation in *Cooper, supra,* where the AFDC recipients resided with adult aid recipients and therefore constituted a recipient group, the nonneedy relative is by definition not a recipient and may not be considered part of the recipient group. Section 11006 clearly provides that the grant is not intended to benefit any person outside the recipient group and therefore restricts the nonneedy relative to reimbursement for his out-of-pocket costs.

In summary, the result obtained by the regulation in issue is not only consistent with past and current welfare practice but is required by statute.

I would uphold Regulation 44-115.611.

CLARK, J.

Appendix B

In the Supreme Court of the State of California

In Bank

S.F. 23012
S.F. 23013
Super. Ct. No. 418746

Supreme Court Filed Jul 17 1974 G. E. Bishel, Clerk

William Waits et al.,
Plaintiffs and Respondents,
vs.
David B. Swoap, as Director, etc., et al.,
Defendants and Appellants.

PETITION FOR REHEARING

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STATE LAW AS CONSTRUED BY THE COURT CONTRAVENES PARAMOUNT FEDERAL LAW

Section 11450 provides in part:

> "(a) For each needy family which includes one or more needy children qualified for [AFDC] aid . . ., there shall be paid . . . an amount of aid each month which when added to his *income* . . . is equal to the sums specified in the following table . . . ." (Emphasis added.)

The Court excluded from "income" as used in this section "noncash economic benefits" and the value of "shared housing," in the context of an AFDC recipient who is furnished housing and utilities by a "non-needy" relative.

As so construed, section 11450 conflicts with applicable federal law. 42 U.S.C. 402 (a)(7) provides:

> "(a) A state plan for aid and services to needy families with children must: . . .
>
> "(7) . . . provide that the state agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the state determines should be considered in determining the need of the child or relative claiming such aid. . . ."[4]

This congressional requirement is implemented by federal regulation 45 C.F.R. 233.20 (a)(3)(ii)(a)(c) which provide:

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4. This statute, and the following quoted regulation were previously cited and discussed in the State's Answer to Petition for Hearing, filed in *CWRO v. Brian*, 11 Cal.3d 237 (1974).

"(a) Requirements for State Plans. A State Plan for . . . AFDC . . . must, as specified below:

"(3) Income and resources: . . . AFDC . . . .

"(ii) Provide that, in establishing . . . the amount of the financial payment:

"(a) All income and resources . . . will be considered in relation to the state's standard of assistance. . . .

"(c) . . . only currently available resources will be considered; . . . ."

The Supreme Court of the United States in *Shea v. Vialpando,* ..... U.S. ....., 129-130, 40 L.ed 2d 120, after considering the import of 42 U.S.C. 402 (a)(7) stated:

"From the inception of the [Social Security] Act, Congress has sought to ensure that AFDC assistance is provided only to needy families, and that the amount of assistance actually paid is based on the amount needed in the *individual* case after other income and resources are considered. Congress has been careful to insure that *all* income and resources properly attributable to a particular applicant be taken into account, . . ." (Emphasis in original text.)

In this context, Congress did not define "resources" as used in 42 U.S.C. 402 (a)(7). But in Title XVI, Social Security Act Supplemental Security Income (S.S.I.), Congress explicitly recognized that the provision of housing, support and maintenance constitutes "income" which reduces the federal assistance otherwise payable. 42 U.S.C. 1382 a(2)(A) of Title XVI provides:

". . . that in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind

> from such person, the dollar amounts otherwise applicable to such individual (and spouse) . . . shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph;..."

The concept that housing, support and maintenance constitutes recognized income under Title XVI should equally apply to AFDC Title IV, Social Security Act and specifically be included within "income" as used in 42 U.S.C. 402 (a)(7).

That this same concept should apply to 42 U.S.C. 402(a)(7) is demonstrated by the language in 42 U.S.C. 402 (a)(7)(24), (added by Social Security Amendments of 1972, Act of October 30, 1972, 86 Stat. 1462, 1482, § 414, effective January 1, 1973). Subsection (a)(24) provides:

> "(24) If an [S.S.I.] individual is receiving benefits under . . . [Title XVI], then, for the period for which such benefits are received, such [S.S.I.] individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the [AFDC] family under . . . [Title IV] and his income and resources shall not be counted as income and resources of a [AFDC] family under . . . [Title IV]."

It is presumed that Congress intended subparagraph (a)(24) to have meaning and effect. The obvious effect is to prevent "in-kind" income (e.g., housing, utilities) provided by a recipient of federal S.S.I. assistance to a state AFDC recipient living in his home to be allocated to the AFDC recipient and to be deducted by a state from the AFDC grant otherwise payable.

This analysis shows that section 11450 as construed by this Court conflicts with the mandatory provisions of 42 U.S.C. 402 (a)(7). This conflict between federal and state law confronts the respondent with an extraordinary dilemma since the Legislature has charged him with the duty as Director of the Department of Benefit Payments ". . . to supervise every phase of the administration of aid . . . in order to secure full compliance with the applicable provisions of state and federal laws." Section 10600; *CWRO v. Carleson,* 4 Cal.3d 445, 452-453 (1971). This delegation of authority by the Legislature reflects the ". . . public policy of this state to establish and maintain conformity between the state law and the requirements of the federal act for the receipt of grants-in-aid in support of the state public assistance program." *Pearson v. State Social Welfare Board,* 54 Cal.2d 184, 189 (1960); *Cox v. State Social Welfare Board,* 193 Cal.App.2d 708, 716-717 (1961). The decision in the instant case should therefore be reconsidered in order that conflict between state and federal law can be obviated, and in order that respondent may discharge his statutory duty to harmonize state law with applicable federal law.

Appendix C

AFDC

.6 Nonneedy Relatives

Natural or adoptive parents, stepfathers, or adults whose needs are met through any categorical aid program shall not be considered to be nonneedy relatives for purposes of this section.

.61 Treatment of Contributions

.611 The excess of the in-kind income value for housing and utilities (see .9 below) included in the minimum basic standard of adequate care figure (Section 44-315.511(a)) for the appropriate size Family Budget Unit over the increased cost of housing and utilities to the nonneedy relative caused by the presence of the AFDC child (ren) in his household shall be considered a contribution in-kind to the Family Budget Unit.

.612 If the nonneedy relative wishes to contribute to the support of the child(ren) in his care in excess of the amount computed in .61 above, he may do so by either identifying the need itself to be contributed using .8 below or by specifying an exact dollar amount to be contributed. Any amounts so specified are considered net income to the AFDC child(ren).

• • • • • • •

.9 For purposes of this section, the following shall be considered as the in kind income value of certain items of need for an FBU:

.91 *Housing*

a. one person FBU—$55/per month
b. two person FBU—$74/per month
c. three person FBU—$81/per month
d. four person or larger FBU—$86/per month

.92 *Utilities* (including telephone):

a. one person FBU—$12/per month
b. two person FBU—$13/per month
c. three person FBU—$14/per month
d. four person or larger FBU—$15/per month

.93 *Food*

a. one person FBU—$29/per month
b. two person FBU—$65/per month
c. three person FBU—$83/per month
d. four person FBU—$103/per month
e. five person FBU—$124/per month
f. six person FBU—$145/per month
g. seven person FBU—$161/per month
h. eight person FBU—$177/per month
i. nine person FBU—$193/per month
j. ten person or larger FBU—$209/per month

.94 *Clothing*—$9 for each person per month

Appendix D

Determining Amount of Grant
Child Living With Parent or Relative

44-315.41 ***Child Living With Parent or Relative (Basic Cash Grant)***

Calculate the amount of the basic cash grant as follows:

.411 **Based on the size of the FBU (see Section 44-213.3) find the maximum aid in the following table:**

Size of FBU	Maximum Aid
1	$129
2	212
3	262
4	311
5	355
6	400
7	438
8	477
9	516
10 or more	554

Appendix E

§ 11450. Table of amount of aid: Increases or decreases commensurate with federal contributions: Payment for children receiving "foster care": Special needs allowances

(a) For each needy family which includes one or more needy children qualified for aid under this chapter, except as provided in Section 11403, there shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid each month which when added to his income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (d) of this section or Section 11453.1, is equal to the sums specified in the following table, as adjusted for cost-of-living increases or decreases pursuant to Section 11453:

Number of eligible needy persons in the same home	Maximum aid
1	$117
2	192
3	237
4	282
5	322
6	362
7	397
8	432
9	467
10 or more	502

If, when and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above

table shall be increased or decreased by an amount equal to such increase or decrease by the United States government, provided that no such increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(b) For children receiving foster care who are qualified for aid under the provisions of this chapter, except as provided in Section 11403, there shall be paid the sum necessary for the adequate care of each child, but not to exceed in any month the product of eighty dollars ($80) multiplied by the number of children in each county receiving foster care. The state shall pay 67.5 percent and the county shall pay 32.5 percent of the aid furnished for the adequate care of such children.

The maximum amount of aid payable under the previous paragraph shall be increased up to one hundred dollars ($100) per month in assistance in those cases and during such times as the United States government contributes.

(c) As used in this chapter, "foster care" means care in a boarding home or institution.

(d) (1) In addition to the amounts payable under subdivision (a) of this section and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. The county shall pay the full cost of the additional aid furnished needy families pursuant to this subdivision after first deducting therefrom any funds received from the federal government. Such recurring special needs shall include but not be limited to special diets upon the recommendation of a physician, and unusual costs of transportation,

laundry, housekeeping service, telephone, and utilities not to exceed the minimum basic standards of adequate care.

(2) A family shall also be entitled to receive an allowance, at county expense after first deducting therefrom any funds received from the federal government, for nonrecurring special needs caused by sudden and unusual circumstances beyond the control of the needy family; provided, however, that such needs shall not be taken into consideration in determining the eligibility of the family for aid.

(3) The department shall establish rules and regulations assuring the uniform application statewide of the provisions of this subdivision.

(e) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a) of this section.

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

Appendix F

45 C.F.R. 233.20(a)(3)(ii)

"(a) Requirements for State Plans. A State Plan for . . . AFDC . . . must, as specified below:

"(3) Income and resources; . . . AFDC . . .

"(ii) Provide that, in establishing financial eligibility and the amount of the assistance payment: (a) All income and resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance, and will first be applied to maintenance costs; (b) if agency policies provide for allocation of the individual's income as necessary for the support of his dependents, such allocation shall not exceed the total amount of their needs as determined by the statewide standard; (c) only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered; . . ."

Appendix G

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Superior Court of the State of California
For the County of Alameda

No. 418748

William Waits, etc., et al.,

Petitioners,

vs.

Robert B. Carleson, etc., et al.,

Respondents.

DECLARATION OF ANTHONY MOSS

I, Anthony Moss, declare as follows:

I am the duly appointed Chief of the Estimates Bureau of the Department of Social Welfare of the State of California. Estimated data concerning the categorical aid programs administered by the Department of Social Welfare is compiled under my supervision, direction and control. One of these programs is the AFDC-FG program.

Based upon such data, it is my opinion that the costs for the fiscal year 1972-1973 that will be incurred by the United States, the State of California and the various counties of the State if they are enjoined from applying Manual of Policies and Procedures Section 44-115.611 will be

$4,623,600.00. Of this sum, the Federal Government will incur a cost of $2,283,700.00 and the State of California will incur a cost of $1,579,400.00 and the various counties will incur a total cost of $760,500.00.

This section concerns children on Aid to Families with Dependent Children (AFDC) who are living with a non-needy relative other than a parent, a stepparent or an adult who is, himself, a recipient of one of the categorical aids. If the actual amount it costs the non-needy relative to have an additional person in his home is less than the amounts allowed in the AFDC need standard for housing, utilities, etc., it requires that the excess be treated as "in-kind" income to the AFDC child.

The basis of my opinion is as follows: It was found that the regulation applied to almost five percent of the AFDC-FG cases or about 21,000 cases. Of these, slightly more than two-fifths (8,360) had grant reductions because of in-kind income. Since this information was based on data collected in October, November, and the first few days of December 1971, it is possible that the proportion of cases with in-kind income since increased as counties have had more time to contact non-needy relatives.

The average amount deducted as "in-kind" income is about $58 per case for the 8,360 cases with such deductions. Because net income, in cash or in-kind, is deducted from the need standard to arrive at the AFDC grant, the average grant reduction would be about $46 a case per month.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 3, 1972 at Sacramento, California.

/s/ ANTHONY MOSS
Anthony Moss
Chief of Estimates Bureau
Department of Social Welfare